

Pitney Bowes, Inc./TLI, Incorporated and Truck Drivers, Oil Drivers, Platform Workers and Filling Station Attendants, Local 705, International Brotherhood of Teamsters, AFL-CIO, Petitioner. Case 13-RC-18635

September 24, 1993

ORDER DENYING REVIEW

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The National Labor Relations Board has considered the Petitioner's request for review of the Regional Director's Decision and Order (pertinent portions of which are attached). The request for review is denied as it raises no substantial issues warranting review.¹

¹ Although Member Raudabaugh agrees with the result, he does not agree that a "joint employer" analysis should focus only on "essential" terms and conditions of employment. See *TLI, Inc.*, 271 NLRB 799 (1984). That analysis gives no weight at all to other terms and conditions of employment. Member Raudabaugh would consider all terms and conditions of employment, albeit he would attach greater importance to the "essential" ones.

APPENDIX

At issue in the instant petition is whether TLI and Pitney Bowes are joint employers of a unit of truckdrivers. TLI has voluntarily recognized the Petitioner as the collective-bargaining representative of a unit of its employees who truck various products from Pitney Bowes's Alsip, Illinois warehouse to various customers. Upon Pitney Bowes's refusal to also recognize the Petitioner as the collective-bargaining representative, the Petitioner filed this petition, contending that Pitney Bowes and TLI are joint employers. Pitney Bowes and TLI both contend that they are not joint employers.

The Alsip warehouse maintained by Pitney Bowes is formally known as its Chicago Distribution Center. From this location, Pitney Bowes distributes its products, such as facsimile machines, copiers, and postage meters, to businesses in Chicago and the Midwest. Since establishing the warehouse in 1973, Pitney Bowes has subcontracted to several different trucking companies the business of trucking its products from the Alsip warehouse to various customers. Before 1986, Pitney Bowes subcontracted this work to a number of small carriers.

In 1986, Pitney Bowes entered into a contract with TLI, Inc. TLI and Pitney Bowes do not have common management, maintain separate offices, and do not have financial interests in each other. Under their contract, TLI provides the drivers that deliver and set up Pitney Bowes' products, as well as other personnel that Pitney Bowes may request from time to time. TLI has similar contracts with more than 260 other businesses, including Jay's Potato Chips. Pitney Bowes leases the trucks for this work under its own name, and obtains the necessary permits for the trucks.

The drivers deliver the machines, plug them in, show the customers how to operate the machines, and remove any traded-in products and return them to the warehouse. Pitney Bowes provides training to the drivers so they can move the

machines and set them up without damaging them. On occasion, drivers have worked in Pitney Bowes warehouse, and are paid the same wage by TLI as when they are driving. The warehouse tasks the drivers have performed include writing down serial numbers and cleaning postage meters. Drivers have not performed these warehouse tasks since September 1992. On several occasions, TLI Supervisor Jim Wiersema⁴ performed tasks for Pitney Bowes, such as hanging doors and relocating a timeclock because he possesses carpentry skills.

The drivers typically arrive at the warehouse between 7 and 7:30 a.m., and spend between 1-1/2 hours unloading the returns from the previous day and then loading the day's deliveries. Work is assigned to the drivers by TLI Supervisor Jim Wiersema, who divides the work into geographical zones and assigns the zones to the drivers. Wiersema works at the Alsip facility. Before September 1992, Pitney Bowes order analysts Pam Lagerstrom and Cheryl Hardesty performed the task of dividing work into zones. Pitney Bowes does not establish routes for the drivers or determine which drivers will deliver to each zone. Drivers decide for themselves when to take lunchbreaks.

During the day, the drivers carry pagers that Pitney Bowes can use to contact them. Pitney Bowes order analyst Lagerstrom contacts the drivers directly if a stop is canceled or there is a problem expected with a delivery. Drivers also call the warehouse and speak to a Pitney Bowes employee if they experience a problem with a delivery or are involved in an accident. However, TLI, not Pitney Bowes, investigates any accidents.

Drivers call in absences to Wiersema, because TLI's main office is not open when the drivers are scheduled to report to Pitney Bowes. TLI provides substitute drivers to cover for sick drivers, and for vacations. Pitney Bowes does not request specific substitute drivers by name, except for where a particular driver has recently delivered for Pitney Bowes and is familiar with its operation. TLI also, on occasion, temporarily transfers drivers who normally work for Pitney Bowes to other businesses, such as Jay's Potato Chips or Frito Lay, with whom it has contracts.

TLI maintains control over the hiring process. Drivers apply for jobs to TLI and Pitney Bowes does not interview or decide which employees to hire. TLI conducts drug tests as required by law. Pitney Bowes keeps files on drivers that are required by law. These files include certifications that the drug tests have been administered, as well as logs of consecutive hours driven, as well as letters of commendation prepared by Pitney Bowes officials.

Drivers are paid by TLI, not by Pitney Bowes. TLI Supervisor Wiersema distributes checks to the drivers on payday. A Pitney Bowes clerical tallies the hours worked by the drivers and forwards that tally to TLI. TLI then produces paychecks for the drivers and bills Pitney Bowes for the number of driver hours worked according to a fee schedule negotiated between TLI and Pitney Bowes. Wages and benefits

⁴ The parties dispute Wiersema's supervisory status; Pitney Bowes claiming that he is a supervisor and the Union contending he is a rank-and-file employee. Because of my resolution of the joint employer issue, it is unnecessary to determine whether Wiersema is in fact a supervisor within the meaning of Sec. 2(11) of the Act. Since Wiersema's title is supervisor, he will be referred to as a supervisor in this decision.

for the drivers are set by TLI and TLI does not inform Pitney Bowes what wages are paid the drivers. TLI is responsible for the drivers' worker's compensation and disability insurance.

TLI has its own work rules. Pitney Bowes does not have input into TLI's rules and does not distribute its own work rules to the drivers. On occasion, Pitney Bowes supervisors have verbally warned drivers that they were taking too long to load their trucks or instructed them to cut their hair or not to wear earrings to maintain a professional appearance. None of these instances have been reduced to writing, and no further action was taken against the employees.

TLI has also conducted its own investigations into complaints about the drivers. Thus, when a motorist observed one of the drivers, Percy Radcliffe, drinking in the Pitney Bowes truck he was driving and called Pitney Bowes to complain, TLI Regional Manager George Pugh and Supervisor Wiersema investigated. Pugh decided to terminate Radcliffe. Similarly, when Pitney Bowes received a number of customer complaints about the performance of driver George Sorenson, the matter was brought to the attention of TLI Regional Manager George Pugh, who determined to transfer Sorenson to another location. Finally, when a Pitney Bowes employee complained that driver Ben Davis was harassing her, Pitney Bowes asked TLI to transfer Davis. To accommodate TLI, Pitney Bowes agreed to allow Davis to work at its Downer's Grove warehouse.

Drivers have occasionally attended informal outings of Pitney Bowes employees. These have included evenings at a comedy club and an outing to a racetrack. Pitney Bowes Warehouse Supervisor Dawn Kapustinec organized these outings and invited the drivers to attend. Drivers are also allowed to use Pitney Bowes' lunchroom, as are visitors to the warehouse. Pitney Bowes also nominates drivers for TLI's driver of the month award. Pitney Bowes formerly gave its own driver of the month award, but that practice ended over a year ago.

The Board will find that two separate entities are a joint employer when they share or co-determine those matters governing the essential terms and conditions of employment. *Rawson Contractors*, 302 NLRB 782 fn. 6 (1991). To establish joint employment status, there must be a showing that the employer meaningfully affects matters such as hiring, firing, discipline, supervision, or direction; routine or minimal supervision of employees is insufficient to support a joint employer claim. *Laerco Transportation & Warehouse*, 269 NLRB 324, 325-326 (1984).

In the instant case, I find that Pitney Bowes control over the employment relationship to be insufficient to render it a

joint employer with TLI. Pitney Bowes exercises minimal influence over essential employment conditions. Thus, although Pitney Bowes' supervisors have verbally warned drivers, those warnings are not documented in writing. And although Pitney Bowes pages drivers during the day to relay instructions or alert the drivers to problems that may arise, such instructions are routine. The drivers themselves determine their routes and when they will take lunchbreaks. TLI maintains nearly complete control over all other significant aspects of the employment relationship, such as hiring, wages, benefits, work rules, assignment of tasks, transfers to other TLI customers, and termination. The Board has previously considered TLI's similar relationship with a different customer, and found that that customer was not a joint employer with TLI. *TLI, Inc.*, 271 NLRB 798 (1984).

The cases cited by the Petitioner wherein the Board has found joint employer relationships are distinguishable. Thus, in *Continental Winding Co.*, 305 NLRB 122 (1991), the employer subcontracted with a labor contractor to replace resigned employees. The employees supplied by the labor contractor worked side-by-side with the employer's other employees, performing the same tasks under the same supervision. Moreover, the employer retained the sole authority to assign, schedule, and supervise employees. *Id.* at fn. 4. By contrast, here the majority of the drivers' time is spent doing different tasks outside of Pitney Bowes' warehouse, and Pitney Bowes does not assign, schedule, or supervise the employees.

In *Pacific Mutual Door Co.*, 278 NLRB 854 (1986), unlike the instant case, the employer retained the right to pass on the experience and qualifications of drivers and to dismiss them at its sole discretion, controlled drivers in the operation of the vehicles, assumed responsibility for the acts of drivers, and specified the routes drivers were to use. *Id.* at 857-859. Finally, in *W. W. Grainger, Inc.*, 286 NLRB 94 (1987), again unlike the instant case, the employer controlled drivers, specified routes, determined vacations, instructed drivers where to purchase fuel, formally evaluated drivers, referred individuals for hire to the labor contractor, and exercised indirect control over compensation by disallowing some of the drivers' claimed work time. *Id.* at 95-96 (1987).

For the foregoing reasons, I find that Pitney Bowes and TLI are not joint employers.

ORDER

It is hereby ordered that the petition filed herein be, and it is, dismissed.